

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

NOTICE OF FINAL RULEMAKING

The Director, Department of Consumer and Regulatory Affairs, pursuant to the authority set forth in Section 11 (b), Medicare Supplement Insurance Minimum Standards Act of 1992, D.C. Code Section 35-2611 et seq., D.C. Law 9-170 and Mayor's Order 92-92, dated July 20, 1992 and D.C. Law 11-202, the Medicare Supplement Insurance Minimum Standards Amendment Act of 1996, effective April 9, 1997, gives notice of the adoption of the following amendments to chapter 22, "Medicare Supplement Insurance Minimum Standards", of Title 26 DCMR, "Insurance." The rulemaking sets forth changes in the Medicare Supplement (Medigap) Provisions of the Social Security Act Amendments of 1994 governing minimum standards for Medicare Supplement Insurance and the corresponding standards of the National Association of Insurance Commissioners (NAIC). The actions and information required by this regulation are hereby declared to be necessary and appropriate in the public interest and for the protection of District residents because without this action, substantial funds will be lost because insurers will not be able to write Medicare supplement business in the District, thereby negatively affecting the health, safety and welfare of the citizens of the District.

The emergency and proposed rules were originally adopted on April 11, 1996, published on May 3, 1996 (43 DCR 2344). No comments were received during the comment period and no changes have been made to the text of the rules. The emergency resolution was deemed approved by the Council of the District of Columbia on September 24, 1996, by virtue of the Council having taken no action to disapprove it. These rules were adopted on March 24, 1997 and are effective upon publication of this Notice in the *D.C. Register*.

The following amendments to Title 26 DCMR, Chapter 22 are adopted:

- A. Section 2202.1, is amended by adding "2218" after the word "2212".
- B. Section 2206.3(h), is amended to read as follows:

"If a group Medicare supplement policy is replaced by another group Medicare supplement policy purchased by the same policyholder, the issuer of the replacement policy shall offer coverage to all persons covered under the old group policy on its date of termination. Coverage under the new group policy shall not result in any exclusion for preexisting conditions that would have been covered under the group policy being replaced."
- C. Section 2207.3(e)(5), is amended to read as follows:

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"If a Group Medicare supplement policy is replaced by another group Medicare supplement policy purchased by the same policyholder, the issuer of the replacement policy shall offer coverage to all persons covered under the old group policy on its date of termination. Coverage under the new policy shall not result in any exclusion for preexisting conditions that would have been covered under the group policy being replaced."

- D. Section 2207.3(g), is amended by deleting the last sentence:

"Upon receipt of timely notice, the issuer shall return to the policyholder of certificateholder that portion of the premium attributable to the period of Medicaid eligibility, subject to adjustment for paid claims".

- E. Section 2210.1, is amended to read as follows:

"No issuer shall deny or condition the issuance or effectiveness of any Medicare supplement policy or certificate available for sale in the District, nor discriminate in the pricing of such a policy or certificate because of the health status, claims experience, receipt of health care, or medical condition of an applicant in the case of an application for a policy or certificate that is submitted prior to or during the six (6) month period beginning with the first day of the first month in which an individual is both 65 years of age or older and is enrolled for benefits under Medicare Part B. Each Medicare supplement policy and certificate currently available from an insurer shall be made available to all applicants who qualify under this subsection without regard to age."

- F. Section 2210.3, is amended to read as follows:

"Except as provided in section 2227, Subsection 2210.1 shall not be construed as preventing the exclusion of benefits under a policy, during the first six (6) months, based on a preexisting condition for which the policyholder or certificateholder received treatment or was otherwise diagnosed during the six (6) months before the coverage became effective."

- G. Section 2213.2, is amended by adding a new subsection to read as follows:

"(c) For purposes of this section, policies or certificates issued prior to July 22, 1992, the issuer shall make the refund or credit calculation separately for all individual policies (including all group policies subject to an individual loss ratio standard when issued) combined and all other group policies combined for experience after the effective date of this amendment. The first such report shall be due by May 31, 1998."

- H. Section 2218.9, is amended to read as follows:

"Issuers of accident and sickness policies or certificates which provide hospital or medical expense coverage on an expense incurred or indemnity basis, to a person(s) eligible for

Medicare shall provide to those applicants a Guide to Health Insurance for People with Medicare in the form developed jointly by the National Association of Insurance Commissioners and the Health Care Financing Administration and in a type size no smaller than 12 point type. Delivery of the Guide shall be made whether or not such policies or certificates are advertised, solicited or issued as Medicare supplement policies or certificates as defined in this chapter.

- (a) Except in case of direct response issuers, delivery of the Guide shall be made to the applicant at the time of application and acknowledgement of receipt of the Guide shall be obtained by the issuer.
- (b) Direct response issuers shall deliver the Guide to the applicant upon receipt but not later than at the time the policy is delivered."
- (c) For the purposes of this section "form" means the language, format, type, size, type proportional spacing, bold character, and line spacing."

I. Section 2221.1 is amended to read as follows:

"Any accident and sickness insurance policy or certificate, other than a Medicare supplement policy; or a policy issued pursuant to a contract under section 1876 of the Federal Social Security Act (42 U.S.C. section 1395 *et seq.*), a disability income policy, or other policy identified in section 2202.2 of this chapter, issued for delivery in the District to persons eligible for Medicare shall notify insureds under the policy that the policy is not a Medicare supplement policy or certificate."

J. Section 2221.2 second paragraph is amended to read:

"THIS [POLICY OR CERTIFICATE] IS NOT A MEDICARE SUPPLEMENT [POLICY OR CONTRACT]. IF YOU ARE ELIGIBLE FOR MEDICARE, REVIEW THE GUIDE TO HEALTH INSURANCE FOR PEOPLE WITH MEDICARE AVAILABLE FROM THE COMPANY"

K. Section 2221.2 is also amended by designating the existing text as subsection "(a)" and by adding a new subsection (b) to read as follows:

"2221.2(b) Applications provided to persons eligible for Medicare for the health insurance policies or certificates described in subsection 2221.1 shall disclose using the applicable statement in Appendix C, the extent to which the policy duplicates Medicare. The disclosure statement shall be provided as a part of, or together with the application for the policy or certificate."

L. Section 2222.2(a)(1) is amended by adding a new subsection to read as follows:

"2222.2(a)(1)(A) If you purchase this policy, you may want to evaluate your existing health coverage and decide if you need multiple coverage."

- M. Section 2222.2(a)(2) is amended to read:

"You may be eligible for benefits under Medicaid and may not need a Medicare supplement policy."

- N. Section 2222.2(a)(3) is amended to read:

"The benefits and premiums under the Medicare supplement policy can be suspended if requested during your entitlement to benefits under Medicaid for 24 months. You must request this suspension within 90 days of becoming eligible for Medicaid. If you are no longer entitled to Medicaid, your policy will be reinstated if requested within 90 days of losing Medicaid eligibility."

- O. Section 2222.2(a)(4) is amended to read:

"Counseling services may be available in the District to provide advice concerning your purchase of Medicare supplement insurance and concerning medical assistance through the District's Medicaid program including benefits as a Qualified Medicare Beneficiary (QMB) and a Specified Low Income Medicare Beneficiary (SLMB)."

- P. Section 2222.2(b)(1) is amended to read as follows:

"(A) Do you have another Medicare supplement policy or certificate in force?"

"(B) If so, do you intend to replace your current Medicare supplement policy with this policy (certificate)?"

- Q. Section 2222.2(b)(2) is amended to read as follows:

"Do you have any other health insurance coverage that provides benefits similar to this Medicare supplement policy?"

- R. Section 2222.2(b)(3) is deleted in its entirety.

- S. Section 2222.2(b)(4) is amended to read as follows:

"Are you covered for medical assistance through the District's Medicaid program?

(A) As a Specified Low Income Medicare Beneficiary (SLMB)?

(B) As a Qualified Medicare Beneficiary (QMB)?

(C) For other Medicaid medical benefits?"

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- T. Section 2222.6, the first, second and third paragraphs are amended to read as follows:
"The notice required by subsection 2222.5 for an issuer shall be provided in substantially the following form in no less than twelve (12) point type:

**NOTICE TO APPLICANT REGARDING REPLACEMENT OF MEDICARE
SUPPLEMENT INSURANCE**

[Insurance company's name and address]

SAVE THIS NOTICE! IT MAY BE IMPORTANT TO YOU IN THE FUTURE.

According to [your application] [information you have furnished], you intend to terminate existing Medicare supplement insurance and replace it with a policy to be issued by [Company Name] Insurance Company. Your new policy will provide thirty (30) days within which you may decide without cost whether you desire to keep the policy. You should review this new coverage carefully. Compare it with all accident and sickness coverage you now have. If after due consideration, you find that purchase of this Medicare supplement coverage is a wise decision, you should terminate your present Medicare supplement coverage. You should evaluate the need for other accident and sickness coverage you have that may duplicate this policy.

**STATEMENT TO APPLICANT BY ISSUER, AGENT [BROKER OR OTHER
REPRESENTATIVE]**

I have reviewed your current medical or health insurance coverage. To the best of my knowledge this Medicare supplement policy will not duplicate your existing Medicare supplement coverage because you intended to terminate your existing Medicare supplement coverage. The replacement policy is being purchased for the following reason(s) (check one):

- ☐ Additional benefits.
☐ No change in benefits, but lower premiums.
☐ Fewer benefits and lower premiums.
☐ Other. (please specify)

- U. Section 2299 definition of "Medicare Supplement" is amended as follows:

"Medicare Supplement" - a group or individual policy of accident and sickness insurance or a subscriber contract of hospital and medical services associations or health maintenance organization, other than a policy issued pursuant to a contract under Section 1876 of the federal Social Security Act (42 U.S.C. Section 1395 et seq.) or an issued policy under a

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demonstration project specified in 42 U.S.C. section 1395ss(g)(1), which is advertised, marketed or designed primarily as a supplement to reimbursements under Medicare for the hospital, medical or surgical expenses of persons eligible for Medicare."

- V. Delete Appendices A, B and C, and in its place add new Appendices A, B and C.

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Appendix A

**MEDICARE SUPPLEMENT REFUND CALCULATION FORM
FOR CALENDAR YEAR _____**

TYPE¹ _____ SMSBP² _____
 For the State of _____ Company Name _____
 NAIC Group Code _____ NAIC Company Code _____
 Address _____ Person Completing Exhibit _____
 Title _____ Telephone Number _____

line ---	(a) Earned Premium ³	(b) Incurred Claims ⁴
1. Current Year's Experience		
a. Total (all policy years)		
b. Current year's issues ⁵		
c. Net (for reporting purposes = 1a - 1b)		
2. Past Years' Experience (All Policy Years)		
3. Total Experience (Net Current Year + Past Year's Experience)		
4. Refunds Last Year (Excluding Interest) _____		
5. Previous Since Inception (Excluding Interest) _____		
6. Refunds Since Inception (Excluding Interest) _____		
7. Benchmark Ratio Since Inception (SEE WORKSHEET FOR RATIO 1) _____		
8. Experienced Ratio Since Inception _____		
Total Actual Incurred Claims (line 3, col. b) = Ratio 2		
Total Earned Prem. (line 3, col. a) - Refunds Since Inception (line 6)		
9. Life Years Exposed Since Inception _____		

If the Experienced Ratio is less than the Benchmark Ratio, and there are more than 500 life years exposure, then proceed to calculation of refund.

10. Tolerance Permitted (obtained from credibility table) _____

Medicare Supplement Credibility Table

Life Years Exposed Since Inception	Tolerance
10,000 +	0.0%
5,000 - 9,999	5.0%
2,500 - 4,999	7.5%
1,000 - 2,499	10.0%
500 - 999	15.0%

If less than 500, no credibility.

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MEDICARE SUPPLEMENT REFUND CALCULATION FORM
FOR CALENDAR YEAR _____

TYPE¹ _____ SMSBP² _____
For the State of _____ Company Name _____
NAIC Group Code _____ NAIC Company Code _____
Address _____ Person Completing Exhibit _____
Title _____ Telephone Number _____

11. Adjustment to Incurred Claims for Credibility _____

Ratio 3 = Ratio 2 + Tolerance

If Ratio 3 is more than Benchmark Ratio (Ratio 1), a refund or credit to premium is not required.

If Ratio 3 is less than the Benchmark Ratio, then proceed.

12. Adjusted Incurred Claims _____

(Total Earned Premiums (line 3, col. a) - Refunds Since Inception (line 6)) X Ratio 3 (line 11)

13. Refund = Total Earned Premiums (line 3, col. a) - Refunds Since Inception (line 6) -

Adjusted Incurred Claims (line 12)

Benchmark Ratio (Ratio 1) _____

If the amount on line 13 is less than .005 times the annualized premium in force as of December 31 of the reporting year, then no refund is made. Otherwise, the amount on line 13 is to be refunded or credited, and a description of the refund and/or credit against premiums to be used must be attached to this form.

¹ Individual, group, individual Medicare Select, or group Medicare Select only² SMSBP = Standardized Medicare Supplement Benefit Plan³ Includes Modal Loadings and Fees Charged⁴ Excludes Active Life Reserves⁵ This is to be used as "Issue Year Earned Premium" for Year 1 of next year's "Worksheet for Calculation of Benchmark Ratios"

I certify that the above information and calculations are true and accurate to the best of my knowledge and belief.

Signature_____
Name - Please Type_____
Title_____
Date

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REPORTING FORM FOR THE CALCULATION OF BENCHMARK RATIO SINCE INCEPTION FOR INDIVIDUAL POLICIES FOR CALENDAR YEAR

TYPE¹ _____ SMSBP² _____
 For the State of _____ Company Name _____
 NAIC Group Code _____ NAIC Company Code _____
 Address _____ Person Completing Exhibit _____
 Title _____ Telephone Number _____

(a) ³ Year	(b) ⁴ Earned Premium m	(c) Factor	(d) (b)x(c)	(e) Cumulative Loss Ratio	(f) (d)x(e)	(g) Factor	(h) (b)x(g)	(i) Cumulative Loss Ratio	(j) (h)x(i)	(k) ⁵ Policy Year Loss Ratio
1		2.770		0.442		0.000		0.000		0.40
2		4.175		0.493		0.000		0.000		0.55
3		4.175		0.493		1.194		0.659		0.65
4		4.175		0.493		2.245		0.669		0.67
5		4.175		0.493		3.170		0.678		0.69
6		4.175		0.493		3.998		0.686		0.71
7		4.175		0.493		4.754		0.695		0.73
8		4.175		0.493		5.445		0.702		0.75
9		4.175		0.493		6.075		0.708		0.76
10		4.175		0.493		6.650		0.713		0.76
11		4.175		0.493		7.176		0.717		0.76
12		4.175		0.493		7.655		0.720		0.77
13		4.175		0.493		8.093		0.723		0.77
14		4.175		0.493		8.493		0.725		0.77
15		4.175		0.493		8.684		0.725		0.77
Total:			(k):		(l):		(m):		(n):	

Benchmark Ratio Since Inception: $(l + n)/(k + m)$

¹Individual, Group, Individual Medicare Select, or Group Medicare Select Only.

²-SMSBP" = Standardized Medicare Supplement Benefit Plan - Use "p" for pre-standardized plans

³Year 1 is the current calendar year - 1. Year 2 is the current calendar year - 2 (etc.) (Example: If the current year is 1991, then: Year 1 is 1990; Year 2 is 1989, etc.)

⁴For the calendar year on the appropriate line in column (a), the premium earned during that year for policies issued in that year.

⁵These loss ratios are not explicitly used in computing the benchmark loss ratios. They are the loss ratios, on a policy year basis, which result in the cumulative loss ratios displayed on this worksheet. They are shown here for informational purposes only.

(For policies that provide benefits for specified limited services)

**IMPORTANT NOTICE TO PERSONS ON MEDICARE
THIS INSURANCE DUPLICATES SOME MEDICARE BENEFITS**

This is not Medicare Supplement Insurance

This insurance provides limited benefits, if you meet the policy conditions, for expenses relating to the specific services listed in the policy. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

This insurance duplicates Medicare benefits when:

- any of the services covered by the policy are also covered by Medicare

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

- hospitalization
- physician services
- other approved items and services

Before You Buy This Insurance

- ✓ Check the coverage in all health insurance policies you already have.
- ✓ For more information about Medicare and Medicare Supplement insurance, review the *Guide to Health Insurance for People with Medicare*, available from the insurance company.
- ✓ For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

[For policies that pay fixed dollar amounts for specified diseases or other specified impairments. This includes cancer, specified disease, and other health insurance policies that pay a scheduled benefit or specific payment based on diagnosis of the conditions named in the policy.]

**IMPORTANT NOTICE TO PERSONS ON MEDICARE
THIS INSURANCE DUPLICATES SOME MEDICARE BENEFITS**

This is not Medicare Supplement Insurance

This insurance pays a fixed amount, regardless of your expenses, if you meet the policy conditions, for one of the specific diseases or health conditions named in the policy. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

This insurance duplicates Medicare benefits because Medicare generally pays for most of the expenses for the diagnosis and treatment of the specific conditions or diagnoses named in the policy.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

- hospitalization
- physician services
- hospice
- other approved items and services

Before You Buy This Insurance

- ✓ Check the coverage in all health insurance policies you already have.
- ✓ For more information about Medicare and Medicare Supplement insurance, review the *Guide to Health Insurance for People with Medicare*, available from the insurance company.
- ✓ For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

(For policies that provide benefits for both expenses incurred and fixed indemnity basis)

**IMPORTANT NOTICE TO PERSONS ON MEDICARE
THIS INSURANCE DUPLICATES SOME MEDICARE BENEFITS**

This is not Medicare Supplement Insurance

This insurance pays limited reimbursement for expenses if you meet the conditions listed in the policy. It also pays a fixed amount, regardless of your expenses, if you meet other policy conditions. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

This insurance duplicates Medicare benefits when:

- any expenses or services covered by the policy are also covered by Medicare; or
- it pays the fixed dollar amount stated in the policy and Medicare covers the same event

Medicare generally pays for most or all of these expenses.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

- hospitalization
- physician services
- hospice care
- other approved items & services

Before You Buy This Insurance

- ✓ Check the coverage in all health insurance policies you already have.
- ✓ For more information about Medicare and Medicare Supplement insurance, review the *Guide to Health Insurance for People with Medicare*, available from the insurance company.
- ✓ For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

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(For policies providing nursing home benefits only)

**IMPORTANT NOTICE TO PERSONS ON MEDICARE
THIS INSURANCE DUPLICATES SOME MEDICARE BENEFITS**

This is not Medicare Supplement Insurance

- Federal law requires us to inform you that this insurance duplicates Medicare benefits in some situations.
- This insurance provides benefits primarily for covered nursing home services.
- In some situations Medicare pays for short periods of skilled nursing home care and hospice care
- This insurance does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

Neither Medicare nor Medicare Supplement insurance provides benefits for most nursing home expenses.

Before You Buy This Insurance

- ✓ Check the coverage in all health insurance policies you already have.
- ✓ For more information about long term care insurance, review the *Shopper's Guide to Long Term Care Insurance*, available from the insurance company.
- ✓ For more information about Medicare and Medicare Supplement insurance, review the *Guide to Health Insurance for People with Medicare*, available from the insurance company.
- ✓ For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

[For other health insurance policies not specifically identified in the previous statements]

**IMPORTANT NOTICE TO PERSONS ON MEDICARE
THIS INSURANCE DUPLICATES SOME MEDICARE BENEFITS**

This is not Medicare Supplement Insurance

This insurance provides limited benefits if you meet the conditions listed in the policy. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

This insurance duplicates Medicare benefits when it pays:

- the benefits stated in the policy and coverage for the same event is provided by Medicare

Medicare generally pays for most or all of these expenses.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

- hospitalization
- physician services
- hospice
- other approved items and services

Before You Buy This Insurance

- ✓ Check the coverage in all health insurance policies you already have.
- ✓ For more information about Medicare and Medicare Supplement insurance, review the *Guide to Health Insurance for People with Medicare*, available from the insurance company.
- ✓ For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.